<u>ARBITRATION ISSUE 7: DSL services/loop conditioning</u> - Should Cavalier be able to obtain DSL provisioning in the absence of Commission established rates?

> <u>**Cavalier's Position:**</u> The rates filed by Verizon with the Commission in December 2000 have not been approved. Provisioning should be completed by these rates for an interim period, with all billing subject to true-up. Either party at any time may petition the Commission to address the rates, and if the Commission declines, may petition the FCC.
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> <u>**Verizon's Alleged Position:**</u> The DDL rates were approved by the New York Public Utility Commission. No other true-up is necessary.
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> <u>***Verizon's Actual Position and Proposed Resolution:***</u>

Contrary to Cavalier's issue statement, this issue relates only to loop conditioning rates. Cavalier's request with respect to loop conditioning is twofold. First, Cavalier asserts that it should be able to obtain loop conditioning in the absence of rates "established" by the Commission. Second, Cavalier proposes an "interim" rate for loop conditioning until such time as the Commission establishes rates. As to the former request, there is no real dispute that Cavalier may obtain loop conditioning in the absence of Commission-established rates. As to the latter request, there is no basis for providing Cavalier the "interim" solution it seeks, which carves out special treatment for Cavalier different from Verizon's offering to every other CLEC in Virginia.

In December 2000, Verizon filed with the Commission its cost study and rates for loop conditioning pursuant to a requirement of the *BA/GTE Merger Order*.[77] The rates Verizon filed with the Commission were the same rates that were determined in a fully litigated cost proceeding in New York in which the rates were subject to CLEC scrutiny. Cavalier has obtained loop conditioning from Verizon at Verizon's filed rates for some time. The FCC,

[77] *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 230 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd. 14032 (2000) ("*BA/GTE Merger Order*").

acting in the stead of the Commission, has conducted a comprehensive rate proceeding in the context of the combined arbitrations between Verizon and Cox, AT&T and WorldCom respectively.[78] The consolidated arbitration will produce fully litigated rates for loop conditioning, among other rates. When those rates become final and effective, Verizon will provide Cavalier loop conditioning at the FCC-ordered rates. Verizon, moreover, has already agreed to Cavalier's request that loop conditioning rates be subject to true-up. Indeed, Verizon already proposed true-up language for loop condition rates, prepared at Cavalier's request, at the time Cavalier filed its Petition.[79]

Cavalier now suggests that it should be entitled to an interim rate for loop conditioning different than the rates available to all other CLECs in Virginia. Specifically, Cavalier proposes that Verizon charge a flat rate of $200 for loop conditioning for all loops, whether such conditioning involves removal of single or multiple bridged taps. According to Cavalier, a flat rate is justified because "some loops will be very easy, balancing out those where more complex

[78] *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 *et al.*, DA 02-1731.

[79] *See* Loop Amendment, Pricing Appendix, § 5:

> Verizon shall make loop conditioning available to Cavalier at the rates set forth in Appendix A. If the Commission should approve (or otherwise allow to go into effect) permanent rates and/or rates structures for loop conditioning different than those shown in Appendix A, all such approved or effective permanent rates and /or rate structures shall supercede those shown in Appendix A. The permanent rates for loop conditioning shall be effective retroactively to the effective date of this Amendment. The Parties shall true-up amounts for loop conditioning performed on or after the effective date of this Amendment as if the permanent rates had been in effect at the time the loop conditioning was performed. Each Party shall invoice the other for any amounts due to it as a result of such true-up, and all such invoices shall be paid in accordance with the Billing and Payment provisions of this Agreement.

The parties did not agree to a true-up provision for all rates.

activity is involved."[80] Not only is Cavalier's request for special treatment inappropriate, Cavalier fails to provide any support for its proposed flat interim rate and fails to relate its proposal to Verizon's costs.

Verizon's filed rate for removal of single bridged tap is $177.48 per loop per request and $430.70 for removal of multiple bridged taps per loop per request. Cavalier offers no historical analysis of whether its previous loop conditioning requests involved removal of single or multiple bridged taps. Nor does Cavalier offer any projection for future orders. Most important, Cavalier does not even argue that its proposed rate, which appears to be pulled out of thin air, bears any relationship whatsoever to Verizon's costs, as required by law.[81] Verizon's filed rates, on the other hand, are based on Verizon's costs to perform the activities necessary to condition loops in the specific instances when one bridged tap must be removed and when multiple bridged taps must be removed. Moreover, Verizon's filed rates have been set in a litigated proceeding, albeit in another state, subject to CLEC scrutiny.

I any event, Cavalier has already agreed to Verizon's filed rates for loop conditioning. As Cavalier acknowledges in its Petition, Verizon initially prepared and proposed what Cavalier calls the "DDL amendment" and Verizon calls the "Loop Amendment" for inclusion in the parties' interconnection agreement. The Loop Amendment addresses a number of loop-related issues, including the rates, terms and conditions for loop conditioning.[82] After Verizon proposed the Loop Amendment to Cavalier, Cavalier marked certain changes to the terms of the Loop

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[80] Petition at 17.

[81] *See Local Competition Order* ¶ 382.

[82] The Loop Amendment also addresses other issues not raised by Cavalier here.

Amendment, signed it and sent it back to Verizon in May and July 2002.[83] Cavalier did not mark any changes to the loop conditioning pricing proposed by Verizon, thereby indicating its agreement to the application of those rates on an interim basis pending true-up. The Commission should reject Cavalier's last minute attempt to renege on that agreement by proposing an unsupported flat rate in place of Verizon's specific and scrutinized rates subject to true-up.

[83] *See* Petition at 17.

<u>ARBITRATION ISSUE 8: 911 Issues</u> - Should Cavalier be compensated for E911 services that it performs and/or should Verizon be compensated for E911 services that it does not perform?

<u>Cavalier's Position:</u> In a multi-carrier environment, Cavalier performs a number of important functions associated with keeping 911 service running properly, including functions that underlie the charges in Verizon's current 911 tariff. Some recognition needs to be made of the fact that Cavalier performs these functions and Verizon does not. Cavalier would prefer a revised Verizon 911 tariff that charges for what Verizon does, but does not charge for what Verizon does not do. An alternative might be for Verizon to charge the counties for the entire cost of the activity, but then remit an appropriate portion of the money to Cavalier. In broad terms this is analogous to jointly provided access service, e.g., charges to IXCs for access when tandem functionality is provided by Verizon but end office and CCL is provided by an independent company whose switch subtends that tandem. The solution in those circumstances is to have each party get paid for what it does, and for the customer (in the access case, the IXC; in the 911 case, the county) not to be charged twice for the same function.

<u>Verizon's Alleged Position:</u> Each party should be compensated per their own tariff, regardless of actual services performed.

<u>Verizon's Actual Position and Proposed Resolution:</u>

Cavalier is apparently having difficulty collecting its tariffed charges for 911 services from a few local governments in Virginia. Cavalier's billing dispute with these local governments is not a matter that involves Verizon's interconnection agreement. The only 911 matters that are relevant to the interconnection agreement between Verizon and Cavalier are the 911 trunks that Verizon provides to Cavalier for routing its customers 911 calls and the access Verizon provides for Cavalier to update its customers' records in the 911 database. Verizon has provided these 911 services to Cavalier for years and there is not dispute between the parties as to these matters. Cavalier's billing dispute with local governments is simply beyond the scope of this proceeding.

To resolve Cavalier's 911 service billing disputes, Cavalier proposes to require Verizon to (i) participate in sending bills pursuant to Cavalier's tariffs for 911/E911 services Cavalier provides or, in the alternative, become Cavalier's billing agent for such services and (ii) amend rates contained in Verizon's retail 911 tariff. There is no legitimate basis for requiring Verizon either to help Cavalier explain its bills and tariff or alternatively to become Cavalier's billing agent as part of an interconnection agreement under Section 251. This arbitration is not the appropriate forum in which to address retail tariff complaints or amendments.

Verizon provides facilities and service that allow its local service customers to access Public Safety Answering Points ("PSAPs") in order to obtain emergency response services. For example, Verizon offers facilities that connect Verizon's network – and thus its local service customers – with the PSAPs. The PSAP, and ultimately the municipality, pay for these facilities and services at prices, terms and conditions set forth in Verizon's retail tariff.[84]

When a CLEC provides local service to an end-user, the CLEC must ensure that the local service customers can place 911 calls to the PSAPs. Although Cavalier could provision its own 911 trunks or purchase them from a third party, Cavalier chooses to purchase trunks from Verizon to connect its switches to Verizon's 911 tandems. It is up to Cavalier to recover its costs for these facilities and other 911-related costs from the relevant local government. Verizon has no obligation to recover Cavalier's 911 costs on Cavalier's behalf.

Cavalier complains here that it needs "some recognition," presumably by the local governments from which Cavalier seeks payment, that both Verizon and Cavalier provide facilities and services for 911 services. Although Verizon has no obligation to do so, Verizon has already offered to work cooperatively to arrange meetings with PSAPs to answer any technical questions the PSAPs, or county or municipal coordinators may have regarding the 911/E911 arrangements.[85] Verizon's proposal is adequate to satisfy Cavalier's concern about a

[84] *See* Miscellaneous Service Arrangements Tariff, S.C.C.– VA – No. 211, § 14.

[85] *See* Verizon Attachment VIII, Business process Requirements §§ 6.1.1, 6.1.2.

local government's confusion of the respective 911 services provided by Verizon and Cavalier. There is no basis in either § 251 or § 252 of the Act to require Verizon to become a billing agent for Cavalier on 911/E911 services.

Cavalier also wants Verizon should change its tariffed 911/E911 rates because they allegedly cover some of the same functions covered by Cavalier's 911 tariff. Again, what Cavalier wants is plainly beyond the scope of this proceeding. As Verizon explained in its Section 271 proceeding, where Cavalier raised the identical issue. Verizon's tariff recovers fixed costs associated with 911/E911 that do not change when customers move to CLECs.[86] The Hearing Examiner recognized that the appropriate forum to address Cavalier's complaint about tariff rates is in a proceeding addressing the rates, terms and conditions by which Verizon and CLECs provide 911/E911 service, "where all interested parties," including affected municipalities may participate.[87] The Commission should reject Cavalier's attempt to bootstrap a tariff complaint into a § 251/252 arbitration.

The Hearing Examiner in Verizon's § 271 proceeding in Virginia found that Verizon provides nondiscriminatory access to 911/E911 services in accordance with the requirements of the Act. Verizon's contract proposal in this arbitration ensures that it continues to do so for Cavalier. Accordingly, the Commission should adopt Verizon's proposed terms and conditions for 911/E911 and reject Cavalier's.

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[86] *See In the Matter of Verizon Virginia Inc. to Verify Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)*, Hearing Transcript at 402-403 (Testimony of William Green).

[87] *Virginia Hearing Examiner Report* at 131.

<u>ARBITRATION ISSUE 9: Dark Fiber</u> - Should a better dark fiber inquiry/ordering process be established?

<u>Cavalier's Position:</u> The current system for making dark fiber available to Cavalier is fraught with excessive red tape and delay. The inquiry, response, and field trial methods employed by Verizon cause unnecessary delay. Verizon needs to establish a system by which a reasonable inquiry can get a reasonable and meaningful response.

<u>Verizon's Alleged Position:</u> The current process is functional for Cavalier.

<u>Verizon's Actual Position and Proposed Resolution:</u>

Cavalier's proposed dark fiber language relates to (1) provisioning of dark fiber though intermediate Verizon central offices; (2) reservation of dark fiber; and (3) inquiries regarding the availability of dark fiber. Verizon agrees to provision dark fiber through intermediate central offices and its contract language reflects this agreement.[88] With respect to reservation of dark fiber, Verizon proposes to offer parallel provisioning to Cavalier. This new process will resolve Cavalier's underlying concerns relating to reservation, so Verizon's proposed language instituting this new process should be adopted. Lastly, Cavalier's proposals regarding the process for determining the availability of dark fiber is unnecessary, overly burdensome and should be rejected.

Verizon's proposed parallel provisioning process will allow Cavalier to apply for collocation space and order dark fiber simultaneously, so that Verizon is able to provision the fiber shortly after the collocation is installed. The parties recently completed a successful trial of Verizon's parallel provision process in Pennsylvania and a trial is well underway in Virginia. Upon successful completion of that trial, Verizon proposes the following contract language be incorporated into the parties' agreement:

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[88] Verizon Attachment III, Network Elements § 8.2.2.

Unless otherwise agreed, the Parties will conduct parallel provisioning of Collocation and unbundled Dark Fiber IOF in accordance with the following terms and conditions:

1) Cavalier will use existing interfaces and Verizon's current applications and order forms to request Collocation and unbundled Dark Fiber IOF.

2) Verizon will parallel process Cavalier's requests for Collocation, including augments, and unbundled Dark Fiber IOF using manual processes until such time as Verizon develops and implements mechanized processes.

3) Before Cavalier submits a request for parallel provisioning of unbundled Dark Fiber IOF, Cavalier will:

a. submit a Dark Fiber Inquiry and receive a positive response from Verizon; and

b. submit a Collocation application for the Verizon central office(s) where the unbundled Dark Fiber IOF terminates and receive confirmation from Verizon that Cavalier's Collocation application has been accepted.

4) Cavalier will prepare requests for parallel provisioning of unbundled Dark Fiber IOF in the manner and form reasonably specified by Verizon.

5) If Verizon rejects Cavalier's unbundled Dark Fiber IOF request, Cavalier may cancel its Collocation application within five (5) business days of such rejection and receive a refund of the Collocation application fee paid by Cavalier, less the costs Verizon incurred to date.

6) If Verizon accepts Cavalier's unbundled Dark Fiber IOF request, Verizon will parallel provision the unbundled Dark Fiber IOF to a temporary location in Verizon's central office. Verizon will charge and Cavalier will pay for parallel provisioning of such unbundled Dark Fiber IOF at the rates specified in Appendix A beginning on the date that Verizon accepts each Dark Fiber IOF request. Verizon reserves the right to establish different and/or additional rates for parallel provisioning subject to any applicable regulatory approval(s).

7) Within ten (10) days after Verizon completes a Cavalier Collocation application, Cavalier will request that Verizon complete the provisioning of all unbundled Dark Fiber IOF provisioned to a temporary location in that Verizon central office. Cavalier will prepare such request(s) in the manner and form specified by Verizon.

This process described in Verizon's proposed contract language, along with Verizon's agreement to a 10-day hold on fiber between the pre-order and ordering phases of an order, adequately address all of Cavalier's concerns.

Verizon's process for providing Cavalier information regarding dark fiber availability is not "broken"[89] as various decisions have recognized. In connection with Verizon's application to provide long distance service in Pennsylvania, the FCC found that Verizon provides access to dark fiber, including access to information regarding the availability of dark fiber, in compliance with the Act [90] Verizon provides access to dark fiber in Virginia just as it does in Pennsylvania. In the Virginia 271 proceeding, Cavalier raised the same issues it raises here. Having considered Cavalier's concerns, and those of other CLECs, the Hearing Examiner concluded, like the FCC, that Verizon's provision of dark fiber to CLECs complies with the Act. The *Virginia Arbitration Order,* furthermore, rejected a similar proposal proffered by AT&T.[91] Even in light of these findings and Cavalier's failure to provide any justification for changing Verizon's processes, Verizon proposes contract language that expands what Verizon will do with respect to providing Cavalier information regarding dark fiber availability. According, the Commission should adopt Verizon's proposal and reject Cavalier's.

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[89] Cavalier's Exhibit C ¶ 9.

[90] *Pennsylvania 271 Order* at ¶ 113.

[91] *Virginia Arbitration Order* ¶ 471.

ARBITRATION ISSUE 10: Collocation - Should collocations arrangements be improved and updated to be more efficient?

Cavalier's Position: Collocation arrangements are in need of improvement. The intervals for applications are too long and cumbersome, Cavalier should be allowed to step into the shoes of a third party's collocation arrangements when Cavalier acquires the equipment out of a bankruptcy proceeding, and Cavalier should be able to use tie-wraps in its collocated equipment. Verizon uses tie wraps in many settings (customer locations, outside plant casing, within its own central offices (as installed by the manufacture), proving that this does not represent a serious accident risk. Cavalier should be permitted to use tie wraps in its own collocated space. In addition, the escalation procedures need improvement.

Verizon's Alleged Position: The use of tie wraps presents a safety hazard and current intervals and collocation procedures are adequate.

Verizon's Actual Position and Proposed Resolution:

Cavalier's proposes language regarding collocation raises three separate issues: (1) the appropriate interval for responding to a Cavalier request to adjust or modify an existing collocation arrangement; (2) whether Cavalier should be permitted to use tie wraps to bind cables together in its collocation arrangement; and, (3) Cavalier's proposed process for assuming the collocation arrangement of another carrier that has abandoned its collocation arrangement as a result of bankruptcy or going out of business. Cavalier is precluded from raising these issues by its participation in Verizon's recent Collocation Tariff Proceeding and the participating parties' settlement of the collocation tariff issues.[92]

After Verizon filed its proposed collocation tariff with this Commission in May 1999, numerous CLECs filed comments objecting to various provisions in Verizon's proposal. Verizon negotiated with the Virginia CLECs, including Cavalier, in an attempt to reach an agreement regarding the collocation rates, terms and conditions. Verizon and six Virginia CLECs were able to reach a settlement, and on February 1, 2002, filed a Joint Petition for

[92] *Application of Verizon Virginia Inc. (f/k/a. Bell Atlantic-Virginia Inc.) for Approval of Network Services Interconnection Tariff (S.C.C. - Va. - No. 218)*, PUC 990101 ("*Collocation Tariff Proceeding*").

Approval of Settlement Agreement Addressing Collocation Rates, Terms and Conditions. Cavalier was the only CLEC that filed comments objecting to the Settlement and resulting tariff. Cavalier, however, chose not to pursue its stated objections and subsequently withdrew its objection.[93] As the Virginia SCC explained, "Cavalier requested leave to withdraw its opposition to the Settlement Agreement and stated that Cavalier and Verizon Virginia have agreed to resolve amicably the remaining differences in their positions. Thereafter, the Commission approved the Settlement and resulting tariff.[94]

Cavalier now tries to take a "second bite" at the apple. Rather than pursue any objections or issues related to Verizon's collocation tariff in the tariff proceeding, Cavalier withdrew any objections to Verizon's collocation tariff. Based on Cavalier's participation in the process that led to the settlement of collocation issues and ultimate approval of Verizon's tariff, the Commission should dismiss Cavalier's proposal here. Requiring Verizon to re-litigate the terms and conditions of collocation deprives Verizon of the benefit of the bargain it reached in settling the collocation issues. The Commission should not sanction a CLEC's use of a § 251/252 arbitration to undermine the very same tariff processes in which it participated.

Cavalier, moreover, has already agreed to incorporate tariffs and applicable tariff review procedures in Part A § 1.3 of the currently applicable interconnection agreement. Cavalier does not dispute Part A § 1.3 in this arbitration. Because Cavalier agreed to incorporate Verizon's collocation tariff, the Commission must reject Cavalier's attempt to renege on that agreement and attack the very same collocation tariff to which it assented.

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[93] *See* letter from Steven T. Perkins, General Counsel, to the Honorable Joel H. Peck, dated June 21, 2002. *See also, Collocation Tariff Proceeding*, Order Approving Settlement Agreement Filed February 1, 2002 at 2.

[94] Verizon Network Interconnection Services Tariff S.C.C. - Va. - No. 218 ("Verizon Collocation Tariff").

A. <u>Cavalier's Attempts To Obtain Special Treatment Must Be Rejected.</u>

Verizon must make collocation available at tariffed rates, terms and conditions on a uniform and nondiscriminatory basis. If Cavalier, or any other CLEC, is allowed to circumvent or undermine the tariff process, Verizon's provision of collocation will not be uniform. This is particularly evident in Cavalier's proposal to change the currently applicable response-time for a CLEC augment application. Pursuant to the Verizon Collocation Tariff, Verizon will respond to a CLEC's request to augment its collocation space (*i.e.*, it will notify the CLEC whether the request can be accommodated) within eight business days.[95] Cavalier proposes to carve out special treatment for itself by shortening the response time to five business days and by deeming Cavalier's requests "approved" if Verizon fails to respond within five days. Cavalier provides no justification for this special treatment or why it needs an interval different than the one to which the CLECs participating in Verizon's tariff proceeding agreed. Furthermore, the FCC has specifically stated that an eight-day response time complies with the Act.[96] Cavalier's request for special treatment must be rejected.

Cavalier continues its quest for special treatment when it seeks to require Verizon to alter its adherence to industry safety standards to allow Cavalier to install tie wraps. A tie wrap is a small nylon strap with a locking head that secures the strap around wires and cables to frames or infrastructure. Tie wraps are a safety hazard in two ways. They can injure personnel and damage other cable. These risks are higher when tie wraps are incorrectly installed.

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[95] *See* Verizon Collocation Tariff § B.i.h.

[96] *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Services*, Memorandum Opinion and Order, 16 FCC Rcd. 3748 at ¶ 13 (2000). The FCC stated that New York's application and provisioning intervals were consistent with the Act and the FCC's goals as set forth in its Collocation Reconsideration Order. One of those intervals is an eight-day response time to a CLEC request for physical collocation.

Specifically, when tie wraps are used in the central office where multiple cables and other facilities are being installed, removed and otherwise handled on a regular basis, the sharp edges of improperly installed tie wraps can cause – and have caused – injuries to personnel that come into contact with them. Tie wraps' edges are so sharp that they also may cause severe lacerations and potential damage to other cables within the same racking. In addition, over time, tie wraps may tighten and deform the secured cable or even become brittle, crack and break (rendering them useless).

These risks are easily eliminated by the use of wax linen or polyester cord. Use of wax linen or polyester cord is an industry standard installation practice. It is in no way burdensome to Cavalier and is at parity with the installation standards Verizon imposes on itself and its vendors in Verizon's central offices. Both wax linen and polyester cord are readily available and cost less than tie wraps.[97]

Consistent with applicable law and national safety standards, Verizon prohibits CLECs from using tie wraps in their collocation arrangements. In its Advanced Services Order, the FCC held that ILECs like Verizon may "impose safety standards that must be met by the [CLECs] equipment to be collocated in [their] central office[s]."[98] Specifically, the FCC held that ILECs may require that CLECs to comply with the same safety standards that Verizon imposes on

[97] Furthermore, Cavalier's claim that the inability to use tie wraps would "add[] significantly to Cavalier's operational hassles" is nonsense. Even if Cavalier were permitted to use tie wraps in its own collocation space, as it requests, Cavalier would still be required to use wax linen or polyester cord for a significant portion of its cable runs, which necessarily exist outside of its collocation arrangement on shared racking used by other CLECs and Verizon. In addition, industry standard installation practices would limit the use of plastic tie wraps even within Cavalier's collocation arrangement and would require the use of cord.

[98] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761 at ¶ 35 (1999).

itself.[99] In so holding, the FCC recognized that "equipment safety standards are important to protect incumbent LECs' central offices...[and] there should be common set of safety principles that carriers should meet, regardless of where they operate."[100] The FCC expressly considered that the safety standards ILECs may impose might increase costs to CLECs, but nevertheless ordered that such standards are justified.[101]

Consistent with the FCC's holdings and rationale, Verizon's collocation tariff requires that CLEC equipment located within Verizon central offices comply with the same standards that Verizon imposes on itself, including the most recent issue of "the Telephone Company's Network Equipment Installation Standards (Verizon Information Publication IP 72201),"[102] which prohibits the use of tie wraps for securing wires and cables in Verizon's central offices.[103] Thus, contrary to Cavalier's claims, Verizon does not use tie wraps in its central offices, unless they are factory-installed by the manufacturer. This same exception applies to Cavalier. However, Verizon does not – and Cavalier may not – install tie wraps in Verizon central offices because of the safety hazard they present.

B. Cavalier Can Access Collocation Arrangements As Set Forth In Verizon's Tariff And As Approved In Any Bankruptcy Proceeding.

Cavalier proposes to require Verizon to permit Cavalier to take over collocation arrangements of another CLEC that has abandoned its collocation arrangement due to bankruptcy or going out of business. Verizon uses terminated interconnection arrangements to

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[99] *Id.* at ¶ 36.

[100] *Id.* at 35.

[101] *Id.* ¶ 34, n.77. (1999).

[102] Verizon Collocation Tariff § 8.a.1.

[103] *See* Network Equipment Installation Standards § 13.15.1 ("Nylon cable ties **SHALL NOT** be used by the installer on any run cable. All installer cable must be secured with cord." (emphasis in original)). This standard may be viewed at http://128.11.40.241/east/wholesale/resources/pdf/ip72201.pdf..

satisfy new collocation orders in certain instances, but Cavalier's proposal that it step into the shoes of a third party's collocation arrangement when Cavalier acquires the *equipment* of the abandoning carrier in a bankruptcy proceeding is an attempt to circumvent bankruptcy law through collocation practices. Notwithstanding Cavalier's proposal to gain the benefits of pre-existing collocation arrangement, Cavalier also proposes to avoid any outstanding liabilities associated with the same facility.

If Cavalier wants to assume the collocation arrangement of a bankrupt CLEC, then it must follow the procedures required by the bankruptcy court in which the CLECs' bankruptcy proceeding is taking place. Cavalier's proposal to use collocation practices to assume such arrangements would likely result in violations to bankruptcy orders. For example, under Cavalier's proposal, it could obtain the rights to a collocation arrangement that has been assigned to another party in the bankruptcy proceeding. This potential conflict is easily avoided by leaving the assignment of collocation arrangements of bankrupt carriers to the appropriate forum -- the bankruptcy court.

Moreover. Cavalier's proposed "take over" would necessarily require, among other things, Cavalier's assumption, or being assigned, the interconnection agreement governing the collocation arrangement in question, including any defaults by the previous occupier of the space. That is, to use an analogy, if the lessee of an apartment is in default, that lessee cannot sublease or assign its lease without first curing any default, or without the sublessee curing the default. Even then, any assumption is subject to the approval of the landlord. Depending on the interconnection agreement between Verizon and the abandoning CLEC, Verizon would have the right to approve or disapprove of any assumption or assignment. Of course, any approval would be subject to the court in which the CLEC's bankruptcy matter is pending.

For these reasons, the Commission should reject Cavalier's proposal to circumvent bankruptcy proceedings through collocation practices to mandate that it acquire rights not obtained through the bankruptcy proceedings.

<u>ARBITRATION ISSUE 11: Customer Contacts</u> - Should there be a more defined process of ensuring customer confidentiality is protected?

> **<u>Cavalier's Position:</u>** The current agreement covers this topic in broad terms. What we need is better training in, and enforcement of, the present provisions. This proposed addition takes care of that. In addition, this language would more closely track the responsibilities set forth by the FCC's recent CPNI order.
>
> **<u>Verizon's Alleged Position:</u>** No additional language is necessary.
>
> ***<u>Verizon's Actual Position and Proposed Resolution:</u>***

Cavalier has greatly and unreasonably expanded a simple contract provision. The original provision imposed clear restrictions on contacts between one carrier's personnel and the other carrier's customers. Cavalier greatly expands those obligations by, among other things, (1) requiring an investigation and a report to the Commission whenever one carrier makes even the flimsiest assertion that the other carrier has inappropriately contacted one of the first carrier's customers; and (2) adding a series of penalties and "bonus" penalties in the event that this section is violated in even the most immaterial way.

Cavalier's justification for all of this is an airy reference to "certain problems" without any other explanation. It also claims that its added provisions "more closely track the responsibilities set forth by the FCC's recent CPNI order." Of course, if Cavalier's new provisions were already included in FCC rules, there would be no need to repeat them here. But the fact is that Cavalier's new proposals are not found anywhere in the FCC's order.

In short, Cavalier has not offered any reasonable justification for the greatly expanded language it proposes here, and that proposal should therefore be rejected.

ARBITRATION ISSUE 12: Erroneous Billing of Prior Verizon Customers - Should Verizon pay a penalty when it continues to bill Cavalier's customer after leaving Verizon?

Cavalier's Position: The problem here is when a customer has left Verizon for Cavalier, but Verizon continues to send (erroneous) bills to the customer, as though he were still served by Verizon. Verizon could through direct contact with this customer, take the lead role to resolve the problem, but does not. These kind of mistakes cause severe disruptions in Cavalier's relationships with new customers as well as cause unnecessary costs for Cavalier to fix the double billing. It is necessary that compensation and liquidated damages provisions exist to compensate Cavalier for the harm to Cavalier and its business reputation and to provide a reasonable incentive to Verizon to avoid the problem in the future.

Verizon's Alleged Position: Verizon has set up an independent team to address these concerns.

Verizon's Actual Position and Proposed Resolution:

There is no need for Cavalier's proposed provision. Although Verizon experienced some problems with double-billing in the past, Verizon showed in its recent application to provide long distance service that these problems have been virtually eliminated. Verizon was receiving approximately 1,000 double billing complaints per month in November 2000 when the Double Billing Team was formed to address the issue. As a result of that team's efforts, Verizon received only eighteen double billing complaints in April 2002 and only twenty in May 2002, representing less than one half of one percent of migrated orders on a monthly basis. Cavalier has done nothing to refute these facts. In its recent filing at the FCC on Verizon's long distance application, Cavalier does not even raise the issue, and the allegations in its Petition here are at best vague and conclusory.

Therefore, Cavalier's proposed contract language should be rejected.

<u>ARBITRATION ISSUE 13: Joint Implementation Team</u> - Should there be special procedures that apply in mass migrations or large scale ordering projects?

> **<u>Cavalier's Position:</u>** Cavalier has experienced many difficulties in managing projects involving mass migrations from another CLEC. The parties ought to set up a regular structure for identifying and resolving disputes and other issues that arise over the course of their relationship. The following provisions are designed to do that.
>
> **<u>Verizon's Alleged Position:</u>** The current escalation procedures are satisfactory.
>
> **<u>Verizon's Actual Position and Proposed Resolution:</u>**

Cavalier proposes that interconnection arrangements will run more smoothly if the parties agree to add another layer of bureaucracy, called the Joint Implementation Team. It claims this additional layer of complexity is needed to deal with mass migrations and large scale ordering projects, but it fails to document any current problems in the areas, and it does not even attempt to explain why the dispute resolution procedures in the current interconnection agreement are inadequate. Therefore, this proposed revision should be rejected.

ARBITRATION ISSUE 14: Treatment of Integrated Digital Loop Carrier Situations - Should there be revised procedures to allow for a test trial to reduce the volume of Cavalier orders rejected for "no facilities" reasons tied to IDLC?

> **Cavalier's Position:** No facilities issues for 2-wire loop installation continually plague Cavalier. Verizon testified in its Virginia 271 proceedings that Cavalier should only experience a "no facility" condition in 1.5% of all orders. When a no facilities condition occurs due to IDLC, Verizon testified that it will find available copper or convert the line to UDLC. Verizon that only 1.5% of IDLC's cannot be converted. [sic] Cavalier has hard data accumulated over the past three years that indicate that the 3-5% of it [sic] orders are rejected. If Verizon testified in Virginia that the condition is only prevalent 1.5% of the time, it should back up this stance with a remedy payment, in the event of a grater occurrence. The parties should engage in a trial to find a solution to the problem.
>
> **Verizon's Alleged Position:** The current metric/PAP process is sufficient.
>
> ***Verizon's Actual Position and Proposed Resolution*:**

The FCC has previously recognized the technological limitation about which Cavalier complains and has therefore required incumbent local exchange carriers to provide alternatives allowing a CLEC to serve a customer with a stand alone loop even if the incumbent currently serves that customer through Integrated Digital Loop Carrier ("IDLC"). Verizon has established procedures doing just that, and those procedures have been approved by the FCC in an order allowing Verizon to provide long distance service.[104] Those same procedures are available to Cavalier under Verizon's contract proposal.[105]

Under those procedures, when Verizon receives a request for a 2-wire unbundled loop Verizon checks to see whether the customer currently services on IDLC and if so, whether a spare loop is available that can be unbundled (that is, a copper loop or Universal Digital Loop Carrier ("UDLC")). If such a facility is available, it is used. If such a facility is not immediately

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[104] Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953 at ¶ 308, n. 984 (1999) ("*New York Order*").

[105] Verizon Attachment III, Network Elements § 3.5.

available, Verizon checks to determine whether an existing Verizon customer served by UDLC or copper in the same service area can be transferred to an IDLC facility, thereby "freeing up" an unbundled loop for the CLEC to use. Finally, if 2-wire loop facilities are still unavailable, the CLEC may still serve the customer using resold facilities or the unbundled network element platform, and the CLEC may use the Bona Fide Request process to define, evaluate and develop new and different types of unbundled loops that could potentially be used to serve end users currently serviced by IDLC.

Despite the FCC's consistent endorsement of Verizon's loop unbundling practices, Cavalier claims they are inadequate and asks for a trial of two proposed methods for unbundling IDLC loops. If Cavalier were seriously interested in testing these approaches, it could have submitted a Bona Fide Request to pursue them. Cavalier, however, has never done so, and does not even attempt to explain why the Bona Fide Request process is inadequate. Cavalier's lack of serious interest in this issue is also reflected in its actions before this Commission. Cavalier filed a complaint about the unbundling of IDLC loops in *Petition of Cavalier Telephone, LLC for Arbitration of Interconnection Rates, Terms and Conditions with Verizon Virginia Inc.*,[106] but abandoned the proceeding the day before hearings were to begin.[107]

Furthermore, one of the two approaches that Cavalier claims should be tested, "multiple switch hosting" has already been examined in the New York collaborative process and found wanting. As for the other approach, the "hair pin" or "nail-up" proposal, even Cavalier concedes that approach, could be used only when Cavalier seeks access to a "limited number" of IDLC

[106] Case No. PUC 99019.

[107] *Id.*, Order of Dismissal (February 21, 2001).

lines.[108] There is, therefore, no good reason for this Commission to mandate a test of these approaches.

Alternatively, Cavalier asks for liquidated damages of $3,000 per line if, in any month, more than one percent of the loops ordered by Cavalier cannot be satisfied because of the technical problems associated with IDLC technology. However, there is no reason for such penalties in light of the fact that Verizon already provides Cavalier with the alternatives, described above and approved by the FCC. Moreover, Cavalier could "game" a procedure by concentrating its loop orders in areas served by IDLC technology, or by repeatedly submitting orders for the same customers served by IDLC technology. (Cavalier could determine whether a particular customer was served by IDLC simply by using the pre-order process.)

For all these reasons, then, Cavalier's alternative proposals should both be rejected.

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[108] Cavalier Exhibit C at 14.

ARBITRATION ISSUE 15: Hot Cuts - Should the parties establish a joint trial to better streamline the process of hot cuts?

> **Cavalier's Position:** The parties should engage a trial to develop a new software controlled hot cut process that would eliminate the "cutover coordination" procedure. The current rate should not exceed $35 until such a new process is introduced.
>
> **Verizon's Alleged Position:** The development of a new process is currently underway in New York. The New Jersey Commission set the cap on the rate. There does not need to be any further trials.
>
> ***Verizon's Actual Position and Proposed Resolution:***

Cavalier attempts to manufacture a problem about hot cuts and then to use that fictional problem as an excuse for a potentially endless series of subsidy payments.

First, there is no hot cut problem. Verizon's hot cut process has received SIO 9000 quality certification. In its recent filing to obtain long distance authority, Verizon showed that it is provisioning unbundled loops, including hot cut, in a fair and non-discriminatory way. Specifically, Verizon showed that it is providing hot cuts, in Virginia in the same way that it does in New York, Massachusetts, New Jersey, and Pennsylvania – jurisdictions where the FCC has reviewed and approved these practices and allowed Verizon into long distance. In fact, hot cuts were not even raised as an issue in this Commission's recent proceedings on Verizon's long distance application.

Cavalier's only objection is about the small class of hot cuts involving IDLC facilities. That, however, is not a hot cut problem. Cavalier's complaint simply reflects the fact that 2-wire analog IDLC loops cannot feasibly be unbundled. As Verizon has shown, in those instances, it makes all reasonable efforts to make other loops or service arrangements available to Cavalier.[109]

[109] *See* Issue 14, *supra*.

Here, however, Cavalier conjures up an illusory hot cut problem so that it may pay a heavily subsidized rate – $35 – for hot cuts until its non-existent problem is solved. The New York, New Jersey, and Delaware commissions, however, all agree that the real cost for hot cuts is far more than $35. In Virginia, Verizon has filed cost studies showing that the hot cut rate should be $139.43.[110] Cavalier's demand for this open-ended subsidy should therefore be rejected.

[110] *See* Verizon's cost studies and testimony filed in *In the Matter of Petition of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia Inc., Pursuant Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731.

<u>ARBITRATION ISSUE 16: Embargoes on Orders and Services</u> - Should the parties be allowed to embargo the provision of services, absent commission authorization, to each other as a mechanism to resolve disputes?

> **<u>Cavalier's Position:</u>** In the absence of any specific Commission ruling, the parties should first bring their grievances to the Commission for resolution before shutting off service. Until determined by the Commission the classification of "bona-fide" rests with the service provider.
>
> **<u>Verizon's Alleged Position:</u>** Verizon determines if the dispute is bona-fide or not, whether or not the issue is a payable or receivable.
>
> ***<u>Verizon's Actual Position and Proposed Resolution:</u>***

Verizon proposes that, if there is a payment dispute between the parties and one of the parties seeks to exercise its right under traditional contract law to terminate service for non-payment, that party must first give the other party written notice 45 days prior to the termination of service. [Is this what the draft contract says?] If the other party believes that termination of service is unwarranted, this notice provision will give it more than adequate opportunity to seek adequate injunctive relief in whatever forum it chooses.

Cavalier's alternative is far too broad. Under its approach, a party could refuse to pay for the flimsiest of reasons, without any consequence, as long as there is any unresolved Commission proceeding relating to the dispute. Creative lawyering could string such Commission proceedings out for years. Cavalier's proposal should therefore be rejected.